

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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BRUCE M. BATES

v.

KEN STARNES

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Civil No. JFM-04-1956

Exempt from ECF

MEMORANDUM

This action for trademark infringement was originally instituted by BIDJET COM, Inc. against JETBID LLC. BIDJET was not represented by counsel but by its founder, Bruce M. Bates. Bates was advised that under Local Rule 101.1.a only individuals may represent themselves and that the action could proceed only if BIDJET was represented by counsel. Bates then amended the complaint to delete BIDJET as a plaintiff and to substitute himself as the plaintiff instead, alleging that he was the owner of the trademark in question and that he had merely licensed the trademark to BIDJET.

Thereafter, this court granted Bates leave to amend the complaint to add two new defendants, Kenneth Starnes and Travelsuite, Inc. as defendants. Presently pending are (1) a “motion request for judgment” (docket 17), (2) a motion to dismiss for lack of jurisdiction filed by Ken Starnes (docket 18), (3) a “request for subpoena for Kenneth R. Starnes (docket 23), and (4) a letter from Bates requesting that “the Court . . . engage the U.S. Marshals service” to serve the amended complaint upon Travelsuite, Inc.

I.

My rulings are as follows.

A. “Motion Request for Judgment.”

The Clerk has docketed this motion as a motion for entry of default for want of answer or

other defense. It appears that it might be appropriate to enter a default against JETBID because the record reflects that JETBID was served on September 29, 2004. *See* docket 12. If JETBID does intend to defend this action, it is directed to file a response to the “motion request for judgment” and to the complaint/amended complaint on or before April 22, 2005. JETBID is reminded that corporations may only appear through counsel in this court. *See* Local Rule 101.1.a.

B. Starnes’ Motion to Dismiss for Lack of Jurisdiction

Starnes raises challenges both to this court’s subject matter jurisdiction and to its authority to exercise personal jurisdiction over him. Because plaintiff appears to be asserting violations of federal trademark infringement law, this court presumably has federal question jurisdiction. *See* 28 U.S.C. §1331. If that is so, the court also has supplemental jurisdiction over any state law claims plaintiff is asserting. *See* 28 U.S.C. §1367.<sup>1</sup>

The question of whether this court may exercise personal jurisdiction over defendants is less clear. Resolution of that question depends upon a myriad of factors that include, in the context of business conducted over the internet, the nature of any website maintained by a defendant and specific efforts made by the defendant to obtain business from persons within the state in which personal jurisdiction is sought to be asserted. *See generally ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707, 713 (4th Cir. 2002); *Carefirst of Maryland Inc., v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 399-402 (4th Cir. 2003). The amount of any business generated from Maryland from website communications might also be relevant.

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<sup>1</sup>If the amount in controversy exceeds \$75,000, the court may also have diversity jurisdiction. *See* 28 U.S.C. § 1332.

The allegations in Bates' complaint/amended complaint would not be sufficient to exercise personal jurisdiction over defendants because, as Starnes points out, the allegations are essentially circular. However, it appears from the memoranda that have been submitted that there may be a sufficient basis for the exercise of personal jurisdiction over the defendants in Maryland. Accordingly, I will defer ruling upon Starnes' motion to dismiss to permit Bates to establish a factual record on the jurisdictional issues.

C. Request for Subpoena for Kenneth R. Starnes

Bates requests that this court issue a subpoena to Starnes so that plaintiff may ask Starnes certain questions. Because plaintiff has not yet established a record that would support the assertion of personal jurisdiction over Starnes in Maryland, this court cannot properly order that Starnes comes to Maryland to ask any questions posed by plaintiff. Accordingly, Bates' request for issuance of a subpoena to Starnes is denied. Plaintiff may, however, avail himself of the procedures set forth in the *Federal Rules of Civil Procedure* relating to the filing of interrogatories and the taking of Starnes' deposition. On the present state of the record any jurisdictional deposition must be taken in Florida.

D. Letter Requesting Alternative Service

Bates' request that this court order that the U.S. Marshal's Service effect service upon Travelsuite, Inc. is denied. This court does not consider that having the Marshal's Service effect service of process in commercial cases that a plaintiff chooses to institute *pro se* is an appropriate use of the Service's limited resources. As stated below, this is an action in which the court believes that all parties should be represented by counsel. If plaintiff chooses not to be represented by counsel, it is incumbent upon him to know the *Federal Rules of Civil Procedure*

and incur all expenses necessary to prosecute the action to conclusion.

II.

As just stated, this is an action in which the court believes that all parties should be represented by counsel. Accordingly, Bates and Starnes are both directed to consider this issue and report back to the court on or before April 22, 2005 as to whether they have retained counsel. If they fail to do so, they (and any corporations with which they are associated) will be held to strict accountability for compliance with all applicable rules. This means, for example, that Bates will have to conduct sufficient discovery to establish a factual record that would justify exercise of personal jurisdiction over any of the defendants. Likewise, defendants run the risk of having a judgment entered against them if they fail to file appropriate responses to any of plaintiffs' pleadings and motions.

In the event that the parties decide not to retain counsel, the following schedule shall govern as to the jurisdictional issues:

May 18, 2005	Deadline for completion of any discovery related to jurisdictional issues
June 17, 2005	Deadline for Bates to file a supplemental memorandum in support of his jurisdictional arguments
July 1, 2005	Deadline for Starnes to file a supplemental memorandum in support of his jurisdictional arguments

Date: March 24, 2005

/s/  
J. Frederick Motz  
United States District Judge

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ORDER

For the reasons stated in the accompanying memorandum, it is, this 24th day of March 2005

ORDERED

1. Plaintiff's motion request for judgment (docket 17) is deemed to be a motion for entry of default. If JETBID intends to oppose the motion, it shall (through counsel) file a response on or before April 22, 2005.

2. Consideration of defendant Starnes' motion to dismiss for lack of jurisdiction (docket 18) is deferred until the completion of discovery on jurisdictional issues;

3. Plaintiff's "motion for subpoena for Kenneth R. Starnes" (docket 23) is denied;

4. Plaintiff's motion for alternative service (docket 25) is denied; and

5. The parties are directed to report to the court on or before April 22, 2005 as to whether they elect to proceed with counsel in this case.

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/s/  
J. Frederick Motz

United States District Judge